

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SUNOCO PARTNERS MARKETING &
TERMINALS L.P.,

Plaintiff,
v.

U.S. VENTURE, INC.,

Defendant.

CIVIL ACTION NO. 4:19-cv-01145

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Sunoco Partners Marketing & Terminals L.P. (“Plaintiff” or “Sunoco”) files this Complaint for Patent Infringement against Defendant U.S. Venture, Inc. (“Defendant” or “U.S. Venture”), as set forth below:

PARTIES

1. Plaintiff Sunoco Partners Marketing & Terminals L.P. is a limited partnership organized under the laws of the State of Texas, with its principal place of business in the United States located at 3807 W. Chester Pike, Newton Square, Pennsylvania 19073. Plaintiff Sunoco Partners Marketing & Terminals L.P. is the owner, by assignment, of all right, title and interest to U.S. Patent No. 9,207,686 (attached hereto as **Exhibit 1**).

2. Defendant U.S. Venture is a corporation organized under the laws of the State of Wisconsin, with its principal place of business located at 425 Better Way, Appleton, Wisconsin 54915. Defendant U.S. Venture’s registered agent for service of process in Texas is CT Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201.

NATURE OF THIS ACTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over U.S. Venture by virtue of U.S. Venture's significant contacts with this forum. Specifically, as set forth below, U.S. Venture has made and used a system for blending butane into gasoline in the Southern District of Texas at U.S. Venture's Houston North terminal. *See Exhibit 2*, Risk Management Plan ("RMP") for U.S. Venture's Houston North terminal. Further, on information and belief, U.S. Venture's butane-blended gasoline is and has been offered for sale, sold, purchased, and/or stored (directly or indirectly through third party terminals) in the Southern District of Texas. Therefore, exercise of jurisdiction over U.S. Venture will not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because this Court has personal jurisdiction over U.S. Venture.

FACTS COMMON TO EACH CLAIM FOR RELIEF

7. U.S. Venture owns and operates terminals throughout the United States. U.S. Venture's terminals receive refined petroleum products (such as gasoline) from a refinery via pipeline, store the products in large storage tanks, and distribute the products to tanker trucks for further distribution to retail gasoline stations. *See Exhibit 3*, Morrill Decl. (May 24, 2017), ¶ 2.

8. At some of its terminals, U.S. Venture uses systems to blend butane into the gasoline before the gasoline is distributed to tanker trucks. *Id.* Specifically, U.S. Venture uses butane blending systems at the following locations: the Houston North terminal at 12325 North

Freeway, Houston, Texas 77060; the Fort Worth terminal in Fort Worth, Texas; the Bettendorf terminal in Bettendorf, Iowa; the Madison South terminal in Madison, Wisconsin; the Milwaukee Central terminal in Milwaukee, Wisconsin; the Milwaukee West terminal in Milwaukee, Wisconsin; and the Green Bay Fox River terminal in Green Bay, Wisconsin. *See Exhibit 2*, RMP for Houston North terminal; **Exhibit 3**, Morrill Decl. (May 24, 2017), ¶¶ 3, 4, 10; **Exhibit 4**, Morrill Decl. (Jan. 12, 2018), ¶ 5.

9. Blending butane with gasoline raises the gasoline's volatility (i.e., its ability to combust), and proper gasoline volatility is important to the proper performance of car engines. For example, because gasoline is more difficult to combust in colder temperatures, it is generally desirable to increase the volatility of gasoline in colder months to keep cars performing at a consistent level year-around. Adding butane also reduces the cost for the gasoline provider because butane is generally less expensive than gasoline bought at the wholesale level. Blending butane with gasoline is therefore desirable to a gasoline supplier because doing so increases the overall volume of the gasoline, which reduces the cost of gasoline on a volumetric basis.

10. The Reid vapor pressure ("RVP") is a common measure of and generic term for gasoline volatility. The U.S. Environmental Protection Agency ("EPA"), as well as states across the nation, regulate the maximum allowable RVP of gasoline that will be sold at retail gasoline stations. These regulations vary by region, state, and locality throughout the year. For example, in some areas, gasoline sold during warmer months (e.g., between May 1 and September 15) may not exceed an RVP of 7.8 to 9.0 pounds-per-square-inch ("psi"), but in other colder months, it may reach as high as 15.0 psi in some states.

11. Until 2017, U.S. Venture's butane blending systems were designed to largely automatically blend butane into gasoline to achieve a target RVP, which is typically set slightly below the maximum legal RVP limit. As explained by Dan Morrill, U.S. Venture's Director of

Terminal Operations, the systems would begin blending a preset percentage of butane into gasoline, sample the butane-blended gasoline, measure the RVP of the butane-blended gasoline, and transmit the measured RVP value to a programmable logic controller (“PLC”). The PLC would then compare the measured RVP value to a target RVP value, calculate an adjustment to the blend ratio, and then use a control valve to adjust the flow rate of the butane stream to achieve the calculated blend ratio. **Exhibit 3**, Morrill Decl. (May 24, 2017), ¶¶ 15–16.

12. On April 13, 2017, U.S. Venture modified its blending systems such that a human operator must manually enter the blend ratio and manually enter any changes to the blend ratio, but the other aspects of U.S. Venture’s systems remained the same. **Exhibit 4**, Morrill Decl. (Jan. 12, 2018), ¶ 3. As modified, U.S. Venture refers to these systems as the “Modified Systems.” *Id.*

13. Upon information and belief, U.S. Venture has been using its Modified Systems to blend butane into gasoline at its terminals throughout the United States, including at its terminal in the Southern District of Texas. *See id.* at ¶ 6 (“U.S. Venture has been using the Modified System since April 13, 2017, including after blending season began again in September 2017.”).

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 9,207,686

14. Sunoco re-alleges and incorporates herein by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

15. On December 8, 2015, U.S. Patent No. 9,207,686 (“the ’686 patent”) was duly and legally issued by the U.S. Patent and Trademark Office (“PTO”) to Mattingly et al. for an invention relating to “Versatile systems for continuous in-line blending of butane and petroleum.” A true and correct copy of the ’686 patent is attached hereto as **Exhibit 1**. The ’686 patent is presumed valid pursuant to 35 U.S.C. § 282.

16. Mattingly et al. assigned all right, title and interest in the '686 patent to Plaintiff Sunoco Partners Marketing & Terminals L.P.

17. In violation of 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, U.S. Venture has been, and still is, infringing one or more claims of the '686 patent by, without authority, making the Modified Systems, using the Modified Systems to perform the claimed methods, and/or by making, selling and/or offering to sell gasoline blended with butane by performing the claimed methods with the Modified Systems.

18. **Claim 16, Preamble.** The preamble of claim 7 recites “[a] method for in-line blending of petroleum and a volatility modifying agent.”

19. U.S. Venture performs a method for in-line blending of petroleum (i.e., gasoline) and a volatility modifying agent (e.g., butane) with its Modified Systems. *See, e.g., Exhibit 3*, Morrill Decl. (May 24, 2017); **Exhibit 4**, Morrill Decl. (Jan. 12, 2018).

20. **Claim 16, Limitation (a).** Claim 16 further recites “providing a petroleum stream that comprises a petroleum vapor pressure and a flow rate.”

21. U.S. Venture’s butane blending methods performed with its Modified Systems include providing a petroleum stream that comprises a petroleum vapor pressure and a flow rate. *See, e.g., Exhibit 3*, Morrill Decl. (May 24, 2017); **Exhibit 4**, Morrill Decl. (Jan. 12, 2018).

22. **Claim 16, Limitation (b).** Claim 16 further recites “providing an agent stream that comprises an agent vapor pressure.”

23. U.S. Venture’s butane blending methods performed with its Modified Systems include providing an agent stream (e.g., butane) that comprises an agent vapor pressure. *See, e.g., Exhibit 3*, Morrill Decl. (May 24, 2017), ¶ 2.

24. **Claim 16, Limitation (c).** Claim 16 further recites “providing an allowable vapor pressure.”

25. U.S. Venture's butane blending methods performed with its Modified Systems include providing an allowable vapor pressure, such as a target vapor pressure. *See, e.g., Exhibit 3*, Morrill Decl. (May 24, 2017), ¶ 16 ("The programmable logic controller compares the measurement to a target value. In the case of vapor pressure, if the measurement is less than the target value, the programmable logic controller sends signals to the equipment to increase the amount of butane that is blended with the gasoline."); **Exhibit 4**, Morrill Decl. (Jan. 12, 2018), ¶ 3 ("On April 13, 2017, I personally modified all of U.S. Venture's blending systems so that an operator must manually enter the percentage of butane blended with gasoline and must manually enter any changes to the blend percentage. All other aspects of the system remained the same.").

26. **Claim 16, Limitations (d)–(e).** Claim 16 further recites "calculating a blend ratio based upon a blended petroleum vapor pressure, said agent vapor pressure, said flow rate and said allowable vapor pressure; [and] blending said agent stream and said petroleum stream at said blend ratio to provide a blended petroleum stream wherein the blended vapor pressure is less than or equal to said allowable petroleum vapor pressure."

27. On information and belief, U.S. Venture's butane blending methods performed with its Modified Systems include calculating a blend ratio based upon a blended petroleum vapor pressure, the agent vapor pressure, the flow rate and the allowable vapor pressure, and then blending the agent stream and the petroleum stream at the blend ratio to provide a blended petroleum stream with a vapor pressure that is less than or equal to the allowable petroleum vapor pressure. *See, e.g., Exhibit 4*, Morrill Decl. (Jan. 12, 2018), ¶ 3.

28. **Claim 16, Limitation (f).** Claim 16 further recites "measuring vapor pressure of the blended petroleum stream."

29. U.S. Venture's butane blending methods performed with its Modified Systems include measuring vapor pressure of the blended petroleum stream. *See, e.g., Exhibit 3*, Morrill Decl. (May 24, 2017), ¶ 16; **Exhibit 4**, Morrill Decl. (Jan. 12, 2018), ¶ 3.

30. U.S. Venture's butane blending methods performed with its Modified Systems satisfy all of the claim limitations, and therefore infringe claim 16 of the '686 patent.

31. **Claim 17.** In addition, claim 17 of the '686 patent recites “[t]he method of claim 16, further comprising: a) withdrawing agent from said agent stream; and b) measuring sulfur content of said agent withdrawn from said agent stream.”

32. On information and belief, U.S. Venture's butane blending methods performed with its Modified Systems include withdrawing agent from the agent stream and measuring sulfur content of the agent withdrawn the agent stream.

33. Accordingly, on information and belief, U.S. Venture's butane blending methods performed with its Modified Systems infringe claim 17 of the '686 patent.

34. On information and belief, U.S. Venture will continue to infringe one or more claims of the '686 patent unless enjoined by this Court.

35. U.S. Venture has been, or at least should have been, aware of the '686 patent prior to the filing of this Complaint. Specifically, U.S. Venture has been, or at least should have been, aware of the '686 patent pursuant to a lawsuit filed by Sunoco against U.S. Venture in the Northern District of Illinois. *See, e.g., Sunoco Partners Marketing & Terminals L.P., v. U.S. Venture, Inc., et al.*, No. 1:15-CV-8178 (N.D. Ill. Sept. 17, 2015). In that case, the district court has found that U.S. Venture's previous blending systems infringe certain claims of other patents related to the '686 patent, including U.S. Patent No. 6,679,302 (to which the '686 claims priority), and Sunoco alleges that U.S. Venture's previous blending systems infringe certain claims of other patents

related to the '686 patent, including U.S. Patent No. 9,494,948 (which is a continuation of the '686 patent).

36. After acquiring knowledge of the '686 patent, U.S. Venture continued to make and use systems for blending butane with gasoline, continued to perform methods for blending butane and gasoline, and continued to make, sell and/or offer to sell butane-blended gasoline created with systems and methods that infringe claims of the '686 patent.

37. In so doing, on information and belief, U.S. Venture knew or should have known (and currently knows or should know) that its actions constitute infringement of the '686 patent, and has had such knowledge prior to the filing of this Complaint. As a result, U.S. Venture's infringement of the '686 patent has been, and continues to be, willful and deliberate.

38. U.S. Venture's continued actions in making, using, selling and/or offering to sell butane-blended gasoline and/or systems or methods for the blending of butane and gasoline has been and will continue to be willful and deliberate.

39. To give competitors notice of the patented invention, Sunoco's patented systems have been marked with the related '302 patent, and also with the word "patent" together with an address of a posting on the Internet that associates the patented systems with the number of the patents (including the '686 patent).

40. As a result of U.S. Venture's infringement, Sunoco has suffered and will continue to suffer damages in an amount to be proven at trial and irreparable harm.

41. Upon information and belief, the conduct of U.S. Venture presents an exceptional case such that Sunoco is entitled to an award of its reasonable attorneys' fees, as provided by 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Sunoco prays for judgment and seeks relief against U.S. Venture as follows:

- (a) For a judgment that one or more claims of the '686 patent have been and continue to be infringed by U.S. Venture;
- (b) For a judgment that U.S. Venture's infringement of the '686 patent has been willful;
- (c) For a judgment and an award of all damages sustained by Sunoco as the result of U.S. Venture's acts of infringement, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- (d) For a permanent injunction enjoining U.S. Venture from infringing one or more claims of the '686 patent;
- (e) For a judgment and an award of enhanced damages pursuant to 35 U.S.C. § 284;
- (f) For a judgment and an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- (g) For a judgment and an award of all interest and costs; and
- (h) For a judgment and an award of such other and further relief as the Court may deem just and proper.

JURY DEMAND

In accordance with FED. R. CIV. P. 38 and 39, Sunoco asserts its rights under the Seventh Amendment to the United States Constitution and demands a trial by jury on all issues that may be so tried.

DATED: March 28, 2019

Respectfully Submitted,

By: /s/ John R. Keville

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